E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
7/4/2024 5:14 PM

II. RAILROAD ABANDONMENT PROCESS

INTERSTATE COMMERCE COMMISSION AND THE RAIL ABANDONMENT PROCESS

An analysis of rail corridors for conversion to trails needs to start with a review of federal regulations. Federal regulations pertaining to railroad operations are imposed by the Interstate Commerce Commission (ICC). An understanding of the ICC and the process involving railroad abandonments is critical to proposing preservation of rail corridors.

The ICC was created in 1887 in an attempt to protect farmers, shippers, rural Americans and others from the monopolistic power of the railroad. In 1920 the ICC was given the responsibility of approving or denying proposed rail abandonments. Current regulations reflect concepts embodied in the Staggers Act of 1980 which sought to deregulate the rail industry by allowing the railroads more flexibility in establishing rates and abandoning unprofitable lines.

The ICC's traditional interest in rail abandonments has no connection with trails. The agency must balance the railroad's goal of making a profit with the shippers need for transportation. In deciding to abandon a line, the agency gives no consideration to converting the corridor to a trail.

LEGAL TOOLS TO PREVENT IMMEDIATE ABANDONMENT

Unless another railroad can continue service and replace an unprofitable company, the ICC will almost always approve an abandonment. However, the ICC can take steps to prevent the immediate destruction of a corridor's continuity by encouraging the abandoning railroad to negotiate with a public body for conversion of the corridor to trail use.

The provisions under which preservation of a railroad right-of-way and conversion to recreational use can be sought are:

1. ***The Railroad Revitalization Reform Act of 1976, 49 U.S.C. Section 809(c).*** Under this section the ICC can put a "Public Use Condition" on an abandonment order, temporarily preventing the railroad from selling its land on the open market and requiring it to negotiate only with a specified public agency. The public use condition holds for a maximum of 180 days and will only be granted by the ICC if proper procedures are followed.

2. ***The National Trails System Act, 16 U.S.C. 1248, Section 8(d), as amended.*** In 1983 Congress adopted section 8(d) which provides that the ICC may not authorize an abandonment but instead shall authorize preservation of a corridor for future rail reactivation. Essentially the route gets put into a "railbank" and assignment of the interim use for the corridor goes to a qualified agency for recreational purposes. It is that agency agrees to manage the trail and cover all associated expenses, including taxes and liability. This Act prevents the ownership of an abandoned right-of-way from automatically reverting to adjacent landowners upon discontinuance of rail service.

These are the two main laws which can be invoked by the Department of Natural Resources to preserve railroad corridors for public uses. More detailed legal information regarding the above provisions are on file with the Department, Capital Programs Administration, Land Planning Services.

Case No. C-02-CV-23-1474
☒ Plaintiff's/State #6
☐ Defendant's Exhibit
☐ Court's
☐ Joint

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E249
MAR-10-93 THU 12:08

II.

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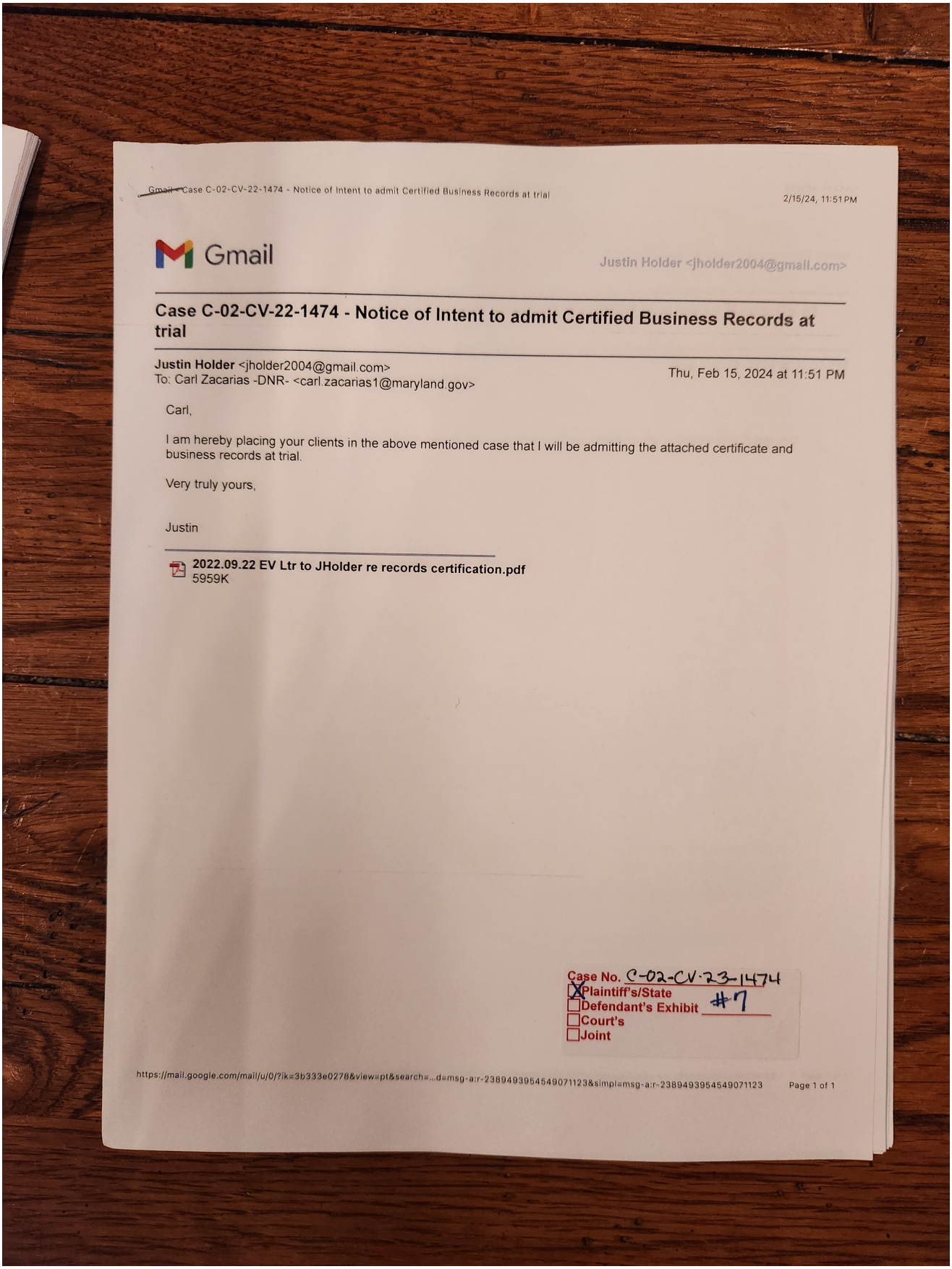

Gmail - Case C-02-CV-22-1474 - Notice of Intent to admit Certified Business Records at trial 2/15/24, 11:51 PM

Gmail Justin Holder <jholder2004@gmail.com>

Case C-02-CV-22-1474 - Notice of Intent to admit Certified Business Records at trial

Justin Holder <jholder2004@gmail.com>
To: Carl Zacarias -DNR- <carl.zacarias1@maryland.gov>
Thu, Feb 15, 2024 at 11:51 PM

Carl,

I am hereby placing your clients in the above mentioned case that I will be admitting the attached certificate and business records at trial.

Very truly yours,

Justin

2022.09.22 EV Ltr to JHolder re records certification.pdf
5959K

Case No. C-02-CV-23-1474
☒ Plaintiff's/State
☐ Defendant's Exhibit #7
☐ Court's
☐ Joint

https://mail.google.com/mail/u/0/?ik=3b333e0278&view=pt&search=...d=msg-a:r-2389493954549071123&simpl=msg-a:r-2389493954549071123 Page 1 of 1

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Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

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Assistant Attorneys General

Writer's Direct Dial No. (410) 260-8352
Emily.Vainieri1@Maryland.gov

September 22, 2022

Via E-mail (jholder2004@gmail.com)
Justin K. Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

Re: ***Estes v. Holder*** **(Case No. C-21-CV-20-000430)**
Certified Record Request

Dear Mr. Holder:

I am writing to you in response to your August 16, 2022 request for the Department of Natural Resources ("DNR" or "the Department") to certify 97 documents, which you provided to me on a google drive.

Records That Are Certified by DNR

Enclosed is a Certification by Philip Hager, DNR's Assistant Secretary for Land Resources, and Attachments 1-4. The Department certified the following documents:

Attachment No. 1: A one-page letter from Mary Ironside (DNR) to you, dated June 3, 2020.

Attachment No. 2: A three-page Minimal Use Impact Agreement signed by you and DNR, dated June 17, 2020.

Attachment No. 3: A one-page letter from Mary Ironside (DNR) to Holly Nicodemus, dated March 14, 2015.

Attachment No. 4: A two-page letter from Carl W. Disque to Mary Ironside (DNR), dated May 15, 2015.

Documents That Are Not Certifiable by DNR

The Department did not certify the remaining records for the following reasons:

1. Numerous documents involve communication between and among you, me, your attorney Mr. Greivell, and Ms. Kovacs (Maryland Office of the Attorney General). Those are not Department records and, therefore, cannot be certified by DNR.

2. Numerous documents involve email communications between you and Ranger Mary Ironside (DNR) or you and Christy Bright (DNR). Because those emails have been printed out by you from your email account, they are your documents not the Department's. It is not DNR's practice to keep the documents as you provided them to me. Those emails, therefore, cannot be certified by DNR.

3. A few documents appear to be either documents created by the Department (i.e., Summary of Field Inspections Conducted 3/20/90 and 9/25/90 and Preliminary Cost Estimate of Bridge Replacement) or historic correspondence to or from DNR employees (i.e., Mark Spencer or Jean Lippard). These documents cannot be certified by DNR because these documents were not kept in the course of regularly conducted business activity.

4. In response to Public Information Act requests, the Department provided you with two documents –DNR incident report and Mary Ironside's telephone records – in a redacted form. The google drive, however, contained unredacted versions of these records. These unredacted versions, therefore, cannot be certified by DNR.

5. Finally, because the remaining documents appear to be Town of Keedysville documents, the Department cannot certify them.

If I can be of further assistance, please feel free to reach out to me at Emily.vainieri1@maryland.gov.

Very Truly Yours,

Emily A. Vainieri
Assistant Attorney General

Enclosure

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

Benjamin Estes, *et al.* *

Case No.: C-21-CV-20-000430

Plaintiffs, *

v. *

Justin Holder, *et al.* *

Defendants. *

* * * * * * * * * * * * *

CERTIFICATION OF RECORDS

Pursuant to Maryland Rule 5-902, the undersigned **Custodian of Records** hereby certifies, as to all of the attached records (Attachment No. 1 through Attachment No. 4), that:

1. The records were created at or near the time of the occurrence of the matters set forth by (or from information transmitted by) a person with knowledge of those matters;
2. The records were made and kept in the course of regularly conducted business activity;
3. It is the regular practice of this business to keep the records as these were kept; and
4. There are no circumstances that would otherwise indicate that the records lack trustworthiness as they were properly kept and maintained in accordance with the regular procedures of this business.

I do solemnly declare and affirm, under the penalties of perjury, that the matters set forth above are true to the best of my knowledge, information, and belief.

Signature:

Printed Name: _____Philip R. Hager_____

Capacity / Position / Job Title: ___Assistant Secretary, Land Resources_

Name of Business or Agency: __Department of Natural Resources_____

Number of Pages / Documents Produced: ___7 pages_____

Date: __9/22/2022_____

This document may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures, including notary signatures, provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail, or via an electronic signature program, shall be deemed to be original.

MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary
Charles Glass, Deputy Secretary

June 3, 2020

Mr. Justin Holder
308 W Chapline ST
Sharpsburg, MD 21782

Mr. Holder:

The Department of Natural Resources personnel responded to reports of vegetation clearing on the State of Maryland owned Weverton-Roxbury Rail Trail adjacent to property on Antietam Drive, Keedysville, MD. On June 3, 2020 boundary recovery was performed to mark state owned lands with pink flagging. During this process, it was determined that state owned lands were cleared to include vegetative understory and ground cover, damage to saplings, damage to nature rock features, and soil compaction. Additionally, a pile of stone is being stored on state property.

This letter serves as a formal notice that all illegal private use and disturbance of public lands must cease. The Department of Natural Resources has adopted regulations that prohibit damage to plants, rocks, minerals, and animals on State Park Land. Authorized by 5-209 of the Natural Resources Article, the Code of Maryland Regulations, 08.07.06.13 entitled "Plants, Rocks, Minerals, Animals" states "In a State park an individual may not: (1) Remove, disturb, damage, or destroy a plant, rock, mineral, or animal; (2) cut down, remove or destroy a tree…"

Further, the Department of Natural Resources has adopted regulations that prohibit the encroachment onto State Park land. Authorized by 5-209 of the Natural Resources Article, the Code of Maryland Regulations, .08.07.06.24 entitled "Encroachment "states:" Private encroachments are prohibited on State Park land."

Notice is hereby given to you that Maryland State Land in the vicinity of your property is not to be encroached upon or utilized or usurped in any way. Remove all objects, items, and materials within seven days from the date of this letter. Failure to meet this deadline will result in legal action.

I can be reached at the address and telephone number below or contacted through email at mary.ironside@maryland.gov

Ranger Mary Ironside
Park Manager
South Mountain Recreation Area

Attachment 1

USE AGREEMENT
(MINIMAL IMPACT)

Name of Park Area: South Mountain Recreation Area/Weverton-Roxbury Rail Trail
Name of Manager/DNR Contact: Mary Ironside
Telephone Number of DNR Contact: 301-791-4656

This Use Agreement ("Agreement") is made this day of June 17th, 2020 between the State of Maryland, Department of Natural Resources ("DNR") and

Justin K Holder License H-436-454-485-534 with an address/telephone/contact person as follows:
Justin Holder
308 west Chapline st
Sharpsburg, md 21782
240 356 2008

1. Term. This Agreement is from June 19th, 2020 to June 21st 2020.

2. Use. The Licensee may have access to and use of the natural resources owned and managed by DNR within locations as noted for the following purpose to provide foot access only to Little Antietam Creek for watercraft access for the Summer Solstice Float and Jam event. The location is the Weverton-Roxbury Rail Trail (WRRT) from Antietam Drive Keedysville, MD to bridge abutment to Little Antietam Creek. The licensee may not use the WRRT for parking or vehicular traffic. All applicable Code of Maryland Regulations and State Park Rules & Regulations apply. The licensee will remove all trash.

The Licensee's use agreement is to permit the licensee to visit certain state property for a particular purpose and is nonexclusive. DNR and its employees, contractors, agents and invitees shall have the continued use of the State's natural resources as DNR determines appropriate.

3. Staffing. The Licensee shall staff the Project with the Licensee's employees, volunteers, students, and/or agents. Any such employees are not employees or agents of DNR or the State of Maryland, and the Licensee is responsible for salaries, expenses, worker's compensation insurance and taxes due to such employees or owed to any governmental agency on their behalf.

4. Compliance with Laws. The Licensee shall comply with all federal, state and local laws and regulations applicable to the Project to be conducted by Licensee under this Agreement to include obtaining any necessary permits or licenses required for the collection or study of threatened or endangered species. The Licensee agrees that it shall comply with the provisions of Title 7 of the Civil Rights Act of 1964 and that it will not discriminate against any person on the basis of race, color, sex, religion or national origin. No person shall be denied the benefits of or be excluded from participation in Licensee's Project based on race, color, sex,

religion or national origin in accordance with the provisions of Article 49(a) of the Annotated Code of Maryland (1998 Rep. Vol.).

5. Research/Collection Information or Data. **Not Applicable for allowable activities.**

6. Commercial Use. DNR may charge a $500 administrative fee for commercial uses..

7. Assignment. The licensee may not assign this Agreement or any of the rights or obligations hereunder. It is a license personal to Licensee.

8. Indemnification. The Licensee shall be responsible for, and shall defend, indemnify and hold harmless DNR, the State of Maryland and its employees, officers, and agents against and from any and all liability or claim of liability for personal injury, death or property damage (including reasonable attorneys' fees) arising out of the use, occupancy, conduct, operation or management of the Project by the Licensee or its agents, contractors, servants, employees, licensees, or invitees, even if the injury does not become apparent or does not manifest until after expiration of this Agreement.

9. Insurance. Licensee shall, at no cost to DNR, carry public liability insurance in which DNR, the State of Maryland and Licensee are named as insured, in an amount not less than a combined single limit of One Million and 00/100 Dollars ($1,000,000), for bodily injury (including death) and damage to property occuring in connecton with Section 8. above.

10. Termination. This Agreement may be terminated by DNR, in whole or in part, whenever DNR determines that such termination is in the best interest of the State. In addition, in the event the Licensee breaches this Agreement, DNR may immediately terminate the Agreement for default or at its sole discretion, allow the Licensee time to take corrective action to cure the default. DNR shall have the right to pursue any and all remedies against the Licensee at law or in equity.

11. Construction. This Agreement shall be governed and interpreted in accordance with the laws of the State of Maryland.

The parties have executed this Agreement as of the day and year first above written.

DEPARTMENT OF NATURAL RESOURCES	LICENSEE
BY: E. Mary Ironside	BY:
Name: Justin Holder Park/Area Manager: Mary Ironside	Name: Title (if corporation):

Approved as to form and legal sufficiency (orig. July 2000)
Office of the Attorney General
Maryland Department of Natural Resources
Useagreement – form 2

Any change to the pre-printed form requires re-approval by the Office of the Attorney General.

ADDENDUM

SPECIFIC TERMS AND CONDITIONS OF THE USE AGREEMENT

A public festival on private neighboring land. Citizens will walk on the Weverton-Roxbury Rail Trail to access the creek. No music or equipment or vending of any kind on state park. Park will be used for foot traffic only to access Little Antietam Creek. All Code of Maryland Regulations and State Park Rules & Regulations apply. No parking on site, no vehicles on site. Parking will be at a satellite facility. The use of amplified music is prohibited on state park property. Citizens will walk or uber in.

MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Lawrence J. Hogan, Jr., Governor
Boyd K. Rutherford, Lt. Governor
Mark J. Belton, Acting Secretary

CERTIFIED MAIL

March 14, 2015

Ms. Holly Nicodemus
4407 Trego Rd
Keedysville, MD 21756

Dear Ms. Nicodemus:

On March 11, 2015, South Mountain Recreation Area Management staff inspected the State owned Weverton-Roxbury Rail Corridor which is adjacent to your property at 4407 Trego Rd Keedysville, MD 21756. During our inspection, it was noted that there is illegal private use of State owned land which is contiguous with your property. Namely, a chain link fence is crossing the Weverton-Roxbury Rail Corridor/B & O Railroad which is owned by the State.

This letter serves as a formal notice that all illegal private use of public lands adjacent to this property must cease. The Department of Natural Resources has adopted regulations that prohibit encroachment onto State Park land. Authorized by 5-209 of the Natural Resources Article, the Code of Maryland Regulations, .08.07.06.24 entitled "Encroachment "states:" Private encroachments are prohibited on State Park land." As defined in the regulation an encroachment includes a wide variety of structures, gardens, vehicles, and fences.

Maintaining a good relationship with our neighbors is important and it is my sincerest hope that we can resolve this issue promptly. Therefore, a deadline of June 20, 2015 has been granted to give you ample time to remove the fence.

I am available to discuss this matter should you need further guidance and information.

Regards,

Ranger Mary Ironside, Manager
301-791-4656

Attachment 3

CARL W. DISQUE, P.C.
ATTORNEY AT LAW

PHONE: (301) 797-3739
(301) 416-7974
FAX: (301) 797-2040

105 West Franklin Street
Hagerstown, Maryland 21740

attorneycarldisque@hotmail.com
www.disquelaw.com

May 15, 2015

Ranger Mary Ironside, Manager
Maryland Department of Natural Resources
South Mountain State Park
c/o South Mountain Recreation Area
21843 National Pike
Boonsboro, MD 21713

Re: My Client: Nicodemus, Holly
Subject Property: 4407 Trego Road, Keedysville, MD 21756
Response to Your Notice Alleging Encroachment on State Park Land & Notice Contesting State Fee Ownership

Dear Ranger Ironside:

Please be advised that I have been retained by the above-referenced property owner to represent her interests with respect to the subject of your March 14, 2015 certified mail correspondence to her, which asserts that a chain link fence owned by Ms. Nicodemus is encroaching lands owned by the State.

Be advised that Ms. Nicodemus contests the accuracy of the matters raised in your letter. Ms. Nicodemus, and her familial predecessors-in-title, have actually used and possessed the lands on which the fence stands and as subsumed within it, as well as additional lands contiguous and adjacent thereto, openly and notoriously, under a claim of right, for a continuous period exceeding twenty (20) years. They have continuously done so at least since the railroad abandoned the line and at all time thereafter, and perhaps prior thereto. The current chain-link fence is actually a replacement of a prior wood-post fence running in generally the same location previously erected and maintained by her family.

Although Ms. Nicodemus, with her then-husband Douglas[1], first acquired her record interest in the property by deed dated December 4, 2008 from her aunt, Brenda J. Hassinger (formerly Brenda J. McGolerick) as recorded at Liber 3573, folio 556 among the Land Records of Washington County, Maryland, the McGolerick family (from whose ancestry my client descends) has continuously resided on the property since its acquisitions by George F. McGolerick and Evelyn L. McGolerick, his wife, by deed dated October 6, 1958, as recorded at Liber 340, folio 445 among the said Land Records (George and Evelyn McGolerick later deeded the property to their said daughter, Brenda, subject, however to

[1] Ms. Nicodemus later divorced Mr. Douglas, and he conveyed his interest in the property to Ms. Nicodemus, by deed dated January 18, 2014, as recorded at Liber 4709, folio 177 among the Land Records of Washington County, Maryland.

the said Grantor's reservation of twin life estates[2] therein, by deed recorded at Liber 857, folio 76 among said Land Records).

My client's family has previously made the State aware of their claims on numerous past occasions, and, at various times, the State has acknowledged the existence claims of Mrs. Hassinger and her McGolerick predecessors onto which my client "tacks" her own recent period of possession. The State has repeatedly promised my clients to provide copies of source title documents through which the State claims any right, title or interest, whether in fee or otherwise, in the subject property. The State promised to do so in late 1993, but never fulfilled that promise, seeming to have waived or abandoned its claims. So it was with both surprise and consternation that my client received your recent communication.

Until the State provides conclusive title proof that it owns fee simple record title to the property in question (and which property my client in turn claims to own in fee simple as previously discussed above), my client will not acquiesce in the requested removal of her fence. She likewise respectfully again reiterates her claims of title and those of her predecessors, further reserves to herself all available remedies in the event that her fence is damage or destroyed without her permission or consent, or if there are other/additional acts of trespass are committed against her property interests.

Thank you for your patience and understanding in the above concerns. We are happy to receive any source title documentation pertaining to the State assertion of ownership, which you may care to provide.

Very truly yours,

Carl W. Disque

cc: Ms. Holly Nicodemus

[2] The life estates are now terminated, as can be seen by reference to a Deed dated September 18, 2009 recorded at Liber 3750, folio 391 among the Land Records of Washington County, Maryland.

51488
EB

SERVICE DATE – JANUARY 12, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36606

MARYLAND DEPARTMENT OF NATURAL RESOURCES—
PETITION FOR DECLARATORY ORDER

Digest:[1] The Maryland Department of Natural Resources filed a petition for declaratory order requesting that the Board determine whether a previous owner of a rail line consummated the abandonment authority granted by the Board's predecessor agency. This decision finds that the abandonment was timely consummated and the Board therefore lacks jurisdiction over the line.

Decided: January 11, 2023

By petition filed on April 22, 2022, the Maryland Department of Natural Resources (MDNR) seeks a declaratory order determining whether a portion of the Hagerstown Branch between Valuation Station 0+00 at Weverton, Md., and Valuation Station 980+00 at Roxbury, Md. (the Line), formerly owned by the Washington County Railroad Company (WCRC) and operated by the Baltimore and Ohio Railroad Company (B&O Railroad), has been abandoned or whether it remains part of the interstate rail network and the Board retains jurisdiction over it. (Pet. 3.) MDNR states that it acquired the line from WCRC's successor in interest in the Line, CSX Transportation, Inc. (CSXT), in September 1991 and "is exploring options for a rail-to-trail project." (Id. at 1.)

Along with its petition, MDNR submits a June 1978 certificate and decision by the Board's predecessor, the Interstate Commerce Commission (ICC), permitting abandonment of the Line (as well as another line segment not at issue here).[2] See Wash. Cnty. R.R. Aban.

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] An Administrative Law Judge initially authorized abandonment of the Line in November 1977. See Wash. Cnty. R.R. Aban. Portion Hagerstown Branch Between Weverton & Hagerstown, also Portion of the Antietam Branch near Security, All in Wash. Cnty., Md., AB 19 (Sub-No. 20) et al. (ICC served Nov. 8, 1977). Subsequently, the ICC received a petition for administrative review, which it denied in a 1978 decision affirming the 1977 decision. See Wash. Cnty. R.R.—Aban. Portion Hagerstown Branch Between Weverton & Hagerstown, also Portion of the Antietam Branch near Sec., All in Wash. Cnty., Md. (April 1978 Decision), AB 19 (Sub-No. 20) et al. (ICC served Apr. 27, 1978).

Portion Hagerstown Branch Between Weverton & Hagerstown, also Portion of the Antietam Branch near Security, All in Wash. Cnty., Md. (June 1978 Ord.), AB 19 (Sub-No. 20) (ICC served June 22, 1978). The June 1978 Order, AB 19 (Sub-No. 20), slip op. at 2, provided that, to exercise the abandonment authority, applicants would need to advise the ICC in writing of the date the abandonment took place and submit two copies of the journal entries showing that the Line had been retired from service.[3] The order also provided that, if not exercised within one year, the abandonment authority would expire. June 1978 Ord., AB 19 (Sub-No. 20), slip op. at 2.

Additionally, MDNR submits two letters describing actions taken by either WCRC or B&O Railroad following the June 1978 Order.[4] The first is addressed to the ICC acting secretary and signed by an attorney for the Chessie System Railroad (Chessie), which owned B&O Railroad.[5] (Pet., Ex. D.) The letter, dated December 6, 1978, and stamped as received by the ICC on December 10, 1978, states that the abandonment authority authorized in Docket No. AB 19 (Sub-No. 20) "was exercised at 12:01 AM, November 15, 1978" and asserts that journal entries would be forwarded to the ICC. (Id.)

The second letter, dated April 10, 1979, is signed by Aubrey H. Herndon, Jr., Chief, Interpretations Branch, and is addressed to Chessie's assistant vice president and comptroller, thanking him for his "letter of April 4, 1979, submitting the accounting for the authorized abandonments of the Hagerstown and Antietam branches that had been inadvertently omitted from [his] original submission to us of February 2, 1979." (Pet., Ex. E.) The letter states that "[t]he accounting is acceptable and our file on this matter will be closed." (Id.)

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Ord. Proc., 5 I.C.C.2d 675, 675 (1989). For the reasons discussed below, the Board will issue a declaratory order finding that the abandonment authority granted by the ICC in the June 1978 Order was consummated and that the Board does not have jurisdiction over the Line.

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[3] In this context, "retirement" refers to consummation of abandonment authority. See Black Hills Transp.—Modified Rail Certificate, FD 34924, slip op. at 5 (STB served Jan. 27, 2010). The submission of journal entries indicating the intent to retire a line was "the approach followed at that time to inform the agency when an abandonment had been consummated." Id.

[4] MDNR states that these letters are the "only documentation known to MDNR" relating to actions taken by WCRC or B&O Railroad with respect to the abandonment. (Pet. 3.)

[5] B&O Railroad was part of Chessie, a unit of CSX Corporation, before merging into the Chesapeake & Ohio Railway Company, which merged into CSXT. See CSX Transp., Inc.—Aban.—Between Big Pool & Tonoloway in Wash. Cnty., Md., AB 55 (Sub-No. 240X), slip op. at 1 n.1 (ICC served July 13, 1988).

For lines authorized for abandonment before 1997,[6] the Board determines whether abandonment authority was consummated on a case-by-case basis by evaluating all the facts and circumstances to determine the line owner's intent. See Beaufort R.R.—Modified Rail Certificate, FD 34943, slip op. at 6 (STB served Mar. 19, 2008). In determining whether there was an intent to consummate abandonment, the Board looks to the rail carrier's actions, including both stated intentions and various physical acts. See Md. Transit Admin.—Aban. Exemption—in Somerset Cnty., Md., AB 590 (Sub-No. 1X), slip op. at 3 (STB served May 13, 2015).

As noted above, in Docket No. AB 19 (Sub-No. 20), the ICC authorized WCRC to abandon and B&O Railroad to cease operations over the Line. See June 1978 Ord., AB 19 (Sub-No. 20), slip op. at 1. The ICC order required that, to exercise the authority, the applicants advise the ICC in writing of the date the abandonment took place and submit copies of the relevant journal entries, and it provided that the authority would expire if not exercised within one year. Id. at 2.

The record here contains a letter from Chessie stating that the abandonment authority was exercised on November 15, 1978. (Pet., Ex. D.) That letter was received by the ICC on December 10, 1978, (id.), and establishes both that the abandonment authority was exercised within the one-year period and that the ICC was advised in writing of the abandonment. See June 1978 Ord., AB 19 (Sub-No. 20), slip op. at 2.

Although the December 1978 letter also states that journal entries would be forwarded to the ICC, (Pet., Ex. D), the ICC file for Docket No. AB 19 (Sub-No. 20) in the Board's possession does not contain journal entries. However, the April 10, 1979 letter, which appears to be from the ICC to Chessie, sufficiently demonstrates that the ICC did receive relevant journal entries at some point prior to that date. That letter seemingly responds to a letter from Chessie, which is described as "submitting the accounting" for the "abandonments of the Hagerstown and Antietam branches" authorized in Docket No. AB 19 (Sub-No. 20). (Pet., Ex. E.) As the Board has recognized, it was standard ICC practice to describe correspondence containing journal entries as "submitting accounting," which indicates that the ICC sent the April 1979 letter to Chessie after having received journal entries. See Chester Cnty., Pa.—Pet. for Declaratory Ord., FD 36400, slip op. at 3 (STB served July 13, 2021) (stating that an ICC letter described correspondence it received "as 'submitting accounting' for rail line retirements," which showed that the ICC received "a journal entry showing the accounting information"). Additionally, the April 1979 letter states that "[t]he accounting is acceptable and our file on this matter will be closed," demonstrating that the ICC considered the journal entries sufficient and conclusive on the matter, and that no additional action was necessary to close the file. (Pet., Ex. E (noting that a copy of the letter would be inserted into the file for Docket No. AB 19 (Sub-No. 20)).)

[6] In 1997, the Board established a rule requiring that railroads authorized to abandon a line file a "notice of consummation" within one year of the service date of a decision authorizing the abandonment "to signify that it has exercised the authority granted and fully abandoned the line." 49 C.F.R. § 1152.29(e)(2). Such notice is "deemed conclusive on the point of consummation." Id.; see Honey Creek R.R.—Pet. for Declaratory Ord., FD 34869 et al., slip op. at 4-5 (STB served June 4, 2008).

There is no evidence of record that calls into question this interpretation of the letters submitted by MDNR. Accordingly, the Board finds that the record sufficiently demonstrates that abandonment authority was exercised within one year of the June 1978 Order. See Black Hills Transp., FD 34924, slip op. at 5 (finding that journal entries were conclusive evidence that a carrier had exercised abandonment authority where agency records contained an ICC letter referencing the date of the carrier's letter filing such journal entries). Therefore, the Board finds that abandonment of the Line, as authorized in Docket No. AB 19 (Sub-No. 20), was timely consummated and that the Board has no jurisdiction over the Line, as it is no longer part of the interstate rail network.

It is ordered:

1. The Board finds that abandonment of a portion of the Hagerstown Branch between Valuation Station 0+00 at Weverton, Md., and Valuation Station 980+00 at Roxbury, Md., as authorized in Docket No. AB 19 (Sub-No. 20), was timely consummated and that the Board has no jurisdiction over the Line.

2. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.